

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Sims Hugo Neu West dba  
Colton Iron & Metal  
790 East M Street  
Colton, California 92324

ID No. CAL000034992

Respondent.

Docket HWCA 2006-1271

CONSENT ORDER FOR  
INITIAL SAMPLING

Health and Safety Code  
Section 25187.1

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Sims Hugo Neu West dba Colton Iron & Metal (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Incidental to its primary activities related to the handling of scrap materials, Respondent generates and handles hazardous waste at 790 East M Street, Colton, California (Site).

1.3. Jurisdiction. Health and Safety Code section 25187.1, subdivision (a), authorizes the Department to issue an order requiring the current or past owner or operator of the facility or site to conduct monitoring, testing, analysis, and reporting with respect to the facility or site which the Department deems reasonable to ascertain the nature and extent of a hazard when the Department determines that the presence or release of hazardous waste may present a substantial hazard to human health or the environment.

1.4. Consent. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest.

1.5. Hearing. Respondent waives any and all rights to a hearing in this matter.

## 2. FINDINGS OF FACT AND DETERMINATIONS

2.1. Site. The Site occupies approximately 3.5 acres. The entire facility is covered with concrete and buildings. The area is zoned industrial. M Street adjoins the facility to the north and adjacent to that is another scrap metal company and a rail yard. To the east of the facility is the South Mount Vernon Avenue cul-de-sac. South of the facility there is an electrical substation and undeveloped land for approximately ¼-mile and then the Santa Ana River. West of the facility is undeveloped land owned by the Respondent, followed by the terminus of Lytle Creek and then residential housing.

2.2. History. Respondent has been located at this property since 1968 and has historically been a scrap metal and automobile dismantling operation. Operations at the Site consist of purchasing recyclable scrap metals, sorting and consolidating the scrap metal, and storing the scrap metal in stockpiles prior to transfer to the Port of Los Angeles and/or domestic steel mills. Ancillary operations at the facility include heavy equipment maintenance, facility maintenance, automobile dismantling and pressing, and scale house operation.

2.3. Potential Contamination at the Site. Hazardous materials used in support of facility operations include, without limitation: petroleum based greases and lubricating oils for equipment maintenance, diesel fuel for onsite equipment operation, and small quantities of miscellaneous paints, soaps, and cleaners for general housekeeping purposes. Hazardous materials that are specifically prohibited from being brought into the facility, but may, on occasion, be concealed in loads received include lead-acid batteries and old electrical lighting ballasts and capacitors potentially containing Polychlorinated Biphenyls (PCBs). Automobile dismantling operations generate used oils, spent lead acid batteries, and waste gasoline. Routine hazardous and/or recyclable wastes generated include: spent lead acid batteries, mercury switches, used lubricating oil, PCB solids (i.e., light ballasts

and capacitors potentially containing PCBs), waste flammable liquids (i.e., drained gasoline) and Non-RCRA solids from the maintenance of the onsite storm water treatment system.

2.3.1. Based on a review of the historical County of San Bernardino Fire Department (County) hazardous material and wastes inspections from the mid-1980's to date, local agency and public concerns and input from Colton Iron and Metal, several areas of the facility may be impacted from historical operations. The following locations are to be investigated as areas of potential concern based on the sources identified above.

2.3.2. Old Car Press Area – The car press operation was formerly located near the southeast corner of the Colton Iron and Metal (CIM) scrap yard. County inspection reports from the late 1980's and early 1990's indicated the inspectors observed staining of the ground in this area. At that time, the car press area of the yard was unpaved. Any spillage or leakage of typical vehicle fluids (motor oils, transmission fluids, gasoline, and diesel) would have fallen directly onto the ground. This area was also identified in a 1990 Emergency Response Notification (ERNs) government database listing as having a release of 150 gallons of hydraulic fluid from the reservoir of the car press.

2.3.3. Storm Water Collection System – The current storm water collection, treatment, and storage system is located in the southwest corner of the scrap yard. The system is located at the natural low point of the scrap yard to aid in storm water collection. Historically, this area and the area adjoining and immediately to the north was unpaved and storm water would pond. The natural low point served as a retention area for storm water. The storm water would then infiltrate into the subsurface soils.

2.3.4. Automobile Dismantling Area – The automobile dismantling area is located in and immediately north of the former storm water retention area. County inspection reports from the early 1990's indicate the inspectors observed staining of the ground in this area associated with the dismantling of cars. At that time the area was

unpaved. Any spillage or leakage of typical vehicle fluids (i.e., motor oils, transmission fluids, gasoline, and diesel) would have gone directly onto the ground.

2.3.5. Car Battery Case Storage Area/Alleged Lead Smelter Location - This area encompasses the northwest corner of the scrap yard. It was reported and confirmed that in the early 1980's, a large number of empty car battery cases (acid and lead plates removed) were stored onsite for several years. A violation was issued to Colton Iron and Metal by the California Occupational Safety and Health Administration (Cal-OSHA) because an employee involved with the sorting and separating of battery cases for recycling purposes had elevated lead levels in his blood. This area was also identified as part of a complaint alleging that a lead smelter operated in this portion of the facility. The allegation is being investigated and no determination has been made as yet.

2.3.6. New Scale House – Although no record of significant environmental releases are known in this area, certain public concern was expressed concerning the potential excavation of impacted soils during the installation of the new scale house.

2.3.7. Perimeter Replacement Fence - Although no record of significant environmental releases are known at the perimeter of the property, releases could have occurred based on historical site operations. Public concern was expressed that impacted soil may be disturbed during the installation of a new and larger replacement perimeter fence along the northerly, easterly, and portions of the westerly facility boundary. The area will be assessed prior to construction of the footing for the fence to address this public concern.

2.4. Based on the above information, the Department has determined that:

2.4.1. Hazardous waste is or has been stored, treated, disposed of, or potentially released at the Site.

2.4.2. The presence or release of hazardous waste at or from the Site may present a substantial hazard to human health or the environment.

2.4.3. Respondent is responsible for conducting the actions ordered herein.

### 3. ORDER

IT IS HEREBY AGREED THAT RESPONDENT shall conduct the following activities:

3.1. Work to Be Accomplished.

3.1.1. Work Plan. Within thirty (30) days of the effective date of this Order, Respondent shall submit a proposed Work Plan to the Department for approval.

3.1.2. Work Plan Objectives. The Work Plan objective is to sample, at the locations identified in Sections 2.3.2. – 2.3.7. for possible soil contamination below the existing concrete.

3.1.3. Commencement of Work. Upon approval of the Work Plan by the Department, Respondent shall have thirty (30) days to commence work. Work shall then follow the schedule established in the approved Work Plan.

3.1.4. Project Coordinator. Within seven (7) days after the effective date of this Order, Respondent shall provide the Department with the name and address of a Project Coordinator to receive all notices, comments, approvals, and other communications from the Department to Respondent relating to this Order.

3.1.5. Engineer/Geologist Supervision. All work pursuant to this Order shall be performed under the direction and supervision of a qualified professional engineer or registered geologist with expertise in hazardous waste investigation. Within thirty (30) days of the effective date of this Order, Respondent shall provide the Department with the name of such engineer or geologist, and of any contractors and subcontractors to be used in carrying out the terms of this Order.

3.1.6. Sampling Report. Within 60 days of completing the sampling activities described in the approved Work Plan, Respondent shall submit a Sampling Report to the Department with the sample results.

3.2. Submittals. Two copies of all documents required to be submitted pursuant to this Order shall be sent to:

Ms. Pamela LePen  
Department of Toxic Substances Control  
Statewide Compliance Division  
5796 Corporate Avenue  
Cypress, California 90630

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment During Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with

this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended by the term of the Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, nor shall Respondent's agreement to comply or compliance with this Order be deemed an admission of sole responsibility for hazardous substances that may be discovered. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times during normal business hours to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times during normal business hours for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring)

generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.4, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated into this Order upon approval by the Department.

3.12. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may,



prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

3.14. Inability or Failure to Satisfactorily Comply. If the Department determines that Respondent is not able to conduct any of the activities required by this Order, or if any such activities are not performed to the Department's satisfaction, then the Department may conduct any monitoring, testing, or analysis (or any combination thereof) which it deems reasonable to ascertain the nature and extent of the hazard, or authorize another person to carry out such actions. Respondent may then be ordered to reimburse the Department or other persons for the costs of such activities.

3.15. Requirements of the Department. The duties imposed by this Order are requirements of the Department issued pursuant to the Hazardous Waste Control Act, Health and Safety Code sections 25100 et seq. If Respondent does not comply with the Order, the Department may, in addition to the actions otherwise authorized under this Order, commence a civil action to require compliance and to recover civil penalties pursuant to Health and Safety Code section 25189.2(b).

3.16. Opportunity to Confer Before Submittal of Proposed Work Plan. Respondent may submit in writing any legal or technical defenses, objections, or contentions which it may desire to make. In addition, within seven (7) days after the issuance of this Order, Respondent may request a conference with the Department to be held within thirty (30) days of the issuance of this Order. The purpose of the conference is to afford an opportunity to discuss the Order, including its applicability, the factual determinations upon which the Order is based, the appropriateness of any actions which the Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order.

#### 4. OTHER PROVISIONS

4.1. Further Actions. The work described in this Order is only considered an initial phase of investigation. Depending on the results of the investigation described in this Order, additional actions, orders and agreements may be required.

4.2. Enforcement Actions. By issuance of this Order, the Department does not waive any right to take enforcement actions within its jurisdiction involving either Respondent(s) or the Site.

4.3. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties, and/or damages as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.4. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.5. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

4.6. Time Periods. "Days" for the purpose of this Order means calendar days.

4.7. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Consent Order.

4.8. Severability. If any provision of this Consent Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or

unenforceable, and the remainder of this Consent Order shall continue in full force and effect.

4.9. Entire Agreement. This Consent Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supersede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Consent Order, the Parties are not relying on any representations not expressly contained in this Consent Order.

4.10. Counterparts. This Consent Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.11. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

## 5. PENALTIES

5.1. By issuance of this Order, the Department does not waive any right to assess penalties for any violations that may exist, now or at any other time, within its jurisdiction involving either Respondent(s) or the Site.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: December 12, 2006

Original Signed by Jeffery Neu  
Mr. Jeffery Neu  
General Manager/Vice President  
Sims Hugo Neu West

Dated: December 19, 2006

Original Signed by Yvonne M. Sanchez  
Ms. Yvonne M. Sanchez, Chief  
Cypress Branch  
Statewide Compliance Division  
Department of Toxic Substances Control